

## In the Supreme Court of the Hawaiian Islands.

MARCH TERM, 1893.

T. R. Lucas et al., Executors of the Will of Geo. Lucas, deceased, vs. F. H. Redward, defendant. A. J. Lopez, garnishee.

BEFORE JUDGE, C. J., BECKERTON J. AND CIRCUIT JUDGE COOPER.

(Appeal from Judd, C. J.)

(Mr. Justice Frear being disqualified from sitting in this case, having been of counsel, by request Circuit Judge Cooper heard the case in his stead.)

Under the Act of 1888, Chapter XXI, "To provide for liens of mechanics and material men," the lien does not exist until notice thereof is filed. An order was made by a Justice that judgment might be had against a garnishee, judgment was not entered thereon as required by the rules. Held, it was not a "recorded judgment" under Section 4 of the Act above named.

OPINION OF THE COURT BY COOPER, J.

On the 15th day of January, 1892, Geo. Lucas, plaintiff's testator, recovered judgment against F. H. Redward in the Police Court of Honolulu for the sum of \$317.16, being \$238.75 damage and \$18.41 costs, from which judgment defendant appealed to the Supreme Court. This appeal was withdrawn on the 20th day of July, 1892.

Upon affidavit of plaintiff's counsel an order was issued on the 6th day of December, 1892, attaching all debts due or accruing from A. J. Lopez to F. H. Redward. After hearing the case on an order to show cause, the Chief Justice on the 24th day of December, 1892, rendered his decision in which he found that "at the date of the service of the order on Lopez, December 7th, he owed Redward the sum of \$1491.00, and is liable as garnishee to the Lucas estate for the amount of the judgment against Redward, and it is so ordered."

The amount due from Lopez to Redward was on account of a building contract.

On the 3d day of January, 1893, Lopez filed a motion to reopen the cause and alleged, that on the 30th day of December, 1892, S. C. Allen, a material man, had filed a lien on the building for the sum of \$1885.20, and that he is informed and believes that if he complies with the order of the Court and pays the amount of the Lucas judgment he will also be obliged to pay the amount of the Allen claim without deducting the sum paid to the plaintiff. The motion was heard before Chief Justice Judd, and on the 8th day of February, 1893, the decision, refusing to reopen, was filed in which it was stated that "the order to the garnishee was a judgment against him; it was rendered six days before the filing of the material man's lien, and is prior in time and in right." It is from this decision that the appeal of Lopez is taken.

The garnishee in his motion to reopen admits that he is owing to Redward the sum of \$1491, and was so on the seventh day of December when the order of attachment was served upon him, but contends that the material man's lien has priority over the judgment against the garnishee, although filed on a day subsequent.

The statute which gives the material man his lien is so radically different from other laws on the same subject, that we can derive but little assistance from the decisions founded upon them.

The salient points of our statute, Session Laws of 1888, Chapter XXI, bearing upon the question before the Court are as follows: Section 1.—Any person or association of persons furnishing labor or material to be used in the construction or repair of any building \* \* \* shall have a lien for the price agreed to be paid for such labor or material upon such building." Section 2.—"The lien provided in the first section hereof shall not attach unless a notice thereof shall be filed in writing in the office of the Clerk of the Circuit or Supreme Court." \* \* \* Section 4.—"The lien herein provided shall have force only from date of filing. It shall have priority in the order of filing over other liens of any nature, and shall be subject to any prior recorded lien or judgment."

It is contended on the part of the garnishee that the lien exists from the date the materials were furnished, and that upon filing the notice required in Section 2, that act for the purpose of determining priorities relates back to the first transaction. This, in our opinion, cannot be maintained.

A statute creating a mechanic's lien is in derogation of the common law, and must be strictly construed, and all the provisions of the statute must be strictly complied with.

Bottomly vs. Grace Church, 2 Cal. 90.

Walker vs. Hans, Hijo et al. 1 Cal. 184.

It seems to us that the statute must be construed as giving the right of lien upon the performance of certain conditions, and that it is essential that they be complied with before the lien given shall have any effect. A man may have a right of attachment against his debtor, but the right does not attach unless the writ be duly issued and served in accordance with law. If it was as contended, the man who furnished the foundation

of the building would always have the prior right even if he was the last to file his notice because he was the first to furnish material.

It seems clear to us that under our statute the lien does not attach, i. e., does not exist unless the notice is filed. The lien shall have force only from the date of filing; it is called into existence by the filing of the notice; before this it had no force or effect and was not binding upon any one.

As to priority our statute seems to be peculiar in itself. Many of the laws in other countries relating to liens provide that certain classes shall have priority over others, as that of the laborer over the material man, and the material man over the sub-contractor; but our statute makes the time of filing the test of priority. "It shall have priority in the order of filing over other liens of any nature," that is, every lien filed in compliance with this Act shall have priority over every other like lien filed subsequently, and all liens so filed shall have priority over all other liens of any nature, subject to any recorded lien or judgment.

This we take to mean that the lien in the order of its filing is to be preferred above other classes of liens unless the same shall have been previously recorded, and in this case the plaintiff claims under a judgment against the garnishee who is the same person who is sought to be made liable to pay the lien.

Was the judgment recorded at the time of or previous to the filing of the lien by Allen?

In the absence of any statute law requiring any ministerial act to be done on the part of the clerk, our practice must be regulated by the rules of Court. It is contended by the plaintiff that upon the filing of a decision with the clerk the judgment must be deemed recorded.

The rule of this Court promulgated at the January term, 1889, provides "that from and after the first day of the January term, 1889, the attorneys of the party in whose favor a verdict or decision shall be rendered, shall \* \* \* if in vacation within fourteen days after the rendering of such decision provided no exceptions have been allowed, file a record of the proceedings in the form hereunto annexed or as near thereto as the circumstances of the case will permit, which shall be the record of the case. The clerk of the Court shall state the actual date of the entry of judgment in the margin of the record, and shall affix the seal of the Court thereto."

Upon examination of the files in the Clerk's Office, it appears that no record as required by the rule has been made, and we are of the opinion that the judgment relied upon by the plaintiff is not a recorded judgment, until the entry of judgment has been made in compliance with the rule.

The cause is therefore reopened and sent back to the Circuit Judge of the First Circuit for hearing for the purpose of determining whether the alleged lien exists, and if so found such further proceedings may be had as are necessary; if it is found that the lien does not exist then the order to the garnishee to stand.

C. W. Ashford for plaintiff; J. A. Magoon for the garnishee. Honolulu, April 19, 1893.

## OUR PASSPORT LAW.

## An Outgoing Passenger Called on by Luning.

Many complaints have been made from time to time of the injustice and hardship to which people are frequently subjected by our wretched middle-aged system of control by passport.

A very recent incident has occurred to make it more than ever obnoxious and which cannot but injure us in the eyes of our more enlightened neighbors. A gentleman employed a stenographer to do certain services. He did more than he was asked and charged a very heavy amount more than Honolulu rates, so said another competent authority. The bill was \$28. For the work ordered \$12 was declared a fair compensation, but \$20 would have been paid. The stenographer was requested to call and adjust the affair. He did not but waited until the gentleman was about to depart when the bill was handed Luning. The passport, under our beautiful system, was stopped; Luning called and demanded payment and the unfortunate victim, understanding from his representations that Luning was a Customs officer, paid the \$28. No doubt it was all an outrage. A debt had been incurred, but \$28 could not have been collected by fair means, and the machinery of an antiquated law was used to compel the payment of a sum not due. Is it not about time that this statute was wiped from our books?

Certainly the evils to arise from losses on account of our too easy credit system are less than the obloquy the whole country sustains when some unfair and unjust use is made of the law.

Twenty of the students of the Kamehameha School have signed the annexation papers. Among them are the sons of Revs. Josepa and Kaubane.

## THE SITUATION.

## S. T. Alexander Takes a Favorable View of It.

The arrival of Claus Spreckels and two or three leading sugar men in Honolulu has created a feeling of anxious inquiry in certain circles, and people are asking what the result of the new factor in the situation is going to be. Mr. Spreckels is credited with hankerings after a Republic under an American Protectorate, as he looks on the labor question as the first one to be solved.

Mr. S. T. Alexander in conversation with an ADVERTISER representative April 24th expressed himself as well pleased with the situation in Honolulu. "The only thing," said Mr. Alexander, "is to hold together. The only danger to be apprehended is from division."

Mr. Alexander is a strong friend of annexation, as he maintains that the first thing to be obtained is good government. "First good government and then labor," is the watchword which he has adopted. He does not, however, apprehend any danger to the sugar industry, and thinks the labor question will find a satisfactory solution.

Mr. Alexander looks on the Japanese as an aggressive, restless people, and believes that they would not be slow to take an active part if the hand of the United States should be taken off for a moment.

In answer to an inquiry as to the state of things on Kauai, Mr. Alexander responded enthusiastically. Makaweli he found a wonderful plantation. "The cane is turning out marvellously, eight tons and more on an acre, and the system of railway tracks for transportation is perfect. The mill is grinding 75 or 80 tons, and Mr. Baldwin will work it up higher."

## SHALL WE RECEIVE HAWAII?

The ideas advanced by certain newspapers that the United States can refuse to grant the request of the educated and progressive portion of the Hawaiian people for annexation, and at the same time prevent the Hawaiians from putting themselves under the protection of any other civilized power, is the essence of absurdity. A policy so preposterous would be doomed to failure from the start. It would furnish a signal example of the behavior of the traditional dog in the manger. It could not be maintained either in the domain of equity or of international law against the protest of other nations.

The aim of this country's ablest statesmen has been to preserve the neutrality of the Hawaiian Islands until the time came when the best elements among their people should voluntarily seek a union with the American Republic. Secretary of State James G. Blaine concisely stated the position of this Government when he declared in an official dispatch in 1881 that "if for any cause the maintenance of such a position of neutrality should be found by Hawaii to be impracticable, this Government would then unhesitatingly meet the altered situation by seeking an avowedly American solution of the grave issues presented." The time indicated by Mr. Blaine has arrived. Neutrality and independence have been "found by Hawaii to be impracticable." While Hawaii was capable of self-government, the United States was amply justified in notifying the world that Hawaiian independence must be respected. The United States does not possess the right to refuse to rescue the Hawaiians from misrule and to demand that other civilized nations shall refuse also.

Hawaii is an important station on the high road of international trade. The paramount interests of civilization and commerce demand that it shall possess a stable and orderly government, competent to protect the rights and property of all persons who reside or who have business interests in the Hawaiian Islands. The debauched royal family of Hawaii fell by its own corruption. Its misrule had become unsupportable to the intelligent and energetic elements who have so signally developed the material wealth of Hawaii, and who have given the islands whatever civilization they possess. The progress of Hawaii and the security of the vast amounts of capital invested in the development of its resources are at stake. To put the former rulers of Hawaii back into

power would be to deliver the key of the North Pacific over to anarchy. The moral sense of the whole civilized world would condemn such an attempt. The character of the present Provisional Government of Hawaii is indicated by its name. It is temporary in its nature, and was only instituted to bridge over the crisis until negotiations could be completed for placing Hawaii under a strong and civilized government.

We must take Hawaii or let it alone. If we take it we shall protect enormously valuable American commercial interests, provide a formidable strategic defense for our Pacific Coast and confer great and lasting benefits on the Hawaiians themselves. If we do not take it we must be prepared to see it seized by Great Britain and made into a powerful fortress that will command our Western seaboard and bar the path of our Pacific commerce.—(Tacoma Union Journal.)

## I. O. O. F.

## ANNIVERSARY CELEBRATION

Harmony Hall Crowded With Members of the Order and Their Friends.

The seventy-fourth anniversary of the institution of Odd Fellowship in America was celebrated April 26th by the members of Excelsior Lodge No. 1, Harmony Lodge No. 3 and Pacific Rebekah Lodge No. 1, at Harmony Hall.

At 8 p.m. District Deputy Grand Sire C. J. Fishel sounded his gavel, and, after a few introductory remarks, the secretary read the anniversary of the Grand Sire. This was followed by the singing of the anniversary hymn, to the tune of "My Maryland," arranged by Bro. J. H. Seiffert, as follows:

Fling wide our banner! Land nor sea Boasts prouder gonfalon than ours; It points to higher destiny Then crowns the strife of mortal powers.

Its fields of white, its border bright, Its links denoting union's might, It waves, an angel's wing above, Proclaiming friendship, truth and love.

Wave, banner of the triple tie, In tranquil glory o'er the land; No dismal or ensanguined dye Shall mar the folds that here expand. It e'er shall share the brother's prayer, The orphan's rescue from despair; A benison each wave shall fling, And many a widowed heart shall sing.

After prayer by Rev. Alex. Mackintosh, P. G., the following programme was rendered:

Song.....Mr. Wakefield Address.....Bro. C. J. Fishel, D. D. G. S. Quartette

Mrs. E. Tenney, Miss von Holt Messrs. G. Smithies, S. E. Pierce Reading Sister A. E. Burnheimer, N. G. Zither Solo.....Mr. T. Wolf Recitation.....Mr. A. E. Murphy Duet.....Masters Schrader and Petrie (Piano and Violin.)

Song.....Mr. G. Rittman Prayer.....Rev. A. Mackintosh, P. G.

The various numbers were loudly applauded, more especially the reading "A Sleeping Sentinel," by Sister Burnheimer, the zither solo, by Mr. T. Wolf, Mr. Rittman's song, "Mother's Last Letter to Me," which was so well received that he was forced to respond with another, and the comic recitation of Mr. A. E. Murphy on "Liberty Enlightening the World." In answer to an encore Mr. Murphy responded with a humorous selection. At the conclusion of the exercises refreshments were served, the audience remaining in their seats and being served by a corps of volunteer waiters under the direction of Mrs. Nicolls and Mrs. C. Williams.

The hall was then cleared for dancing, music being furnished by a string band of six pieces, which was kept up until a late hour.

The following committees were in charge of the affair, and the success of their efforts can be testified to by all those who were fortunate enough to be present:

Arrangements—Bro. Chas. J. Fishel, chairman and general director.

Reception—Bros. W. C. Parke, H. Hosler, M. D. Monsarrat, C. J. Fishel; Sisters M. White and C. K. Williams.

Floor—Bros. H. H. Williams, A. Lucas, W. M. Graham; Sisters R. Adler and E. Cron.

Hall and Decoration—Bros. L. H. Dee, J. J. Lecker, M. D. Monsarrat, F. Alvien, C. Anwick; Miss Rose Adler and Miss C. Petrie.

Refreshment—Mrs. Nicolls and Mrs. C. Williams.

Invitation—Bros. R. Lewers, J. C. Lorenzen, C. J. Fishel and Sister E. A. Burnheimer.

If you are troubled with seasickness take a package of Taro Maloo with you. It is recommended for all stomach trouble.

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PAINTS, ETC., ETC., ETC.,

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